

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF NOLIN RURAL ELECTRIC)	
COOPERATIVE CORPORATION SEEKING APPROVAL)	CASE NO.
OF AN ADJUSTMENT OF BILLINGS REGARDING)	10373
MEMBERS JOHN BLAND AND DONALD FARRIS)	

O R D E R

Before the Commission is the application of Nolin Rural Electric Cooperative Corporation ("Nolin RECC") for Commission approval of settlements with two customers on disputed bills. This application presents the question of whether a utility, to resolve a billing dispute, may agree to accept less compensation for service rendered than its filed rate schedule prescribes. The Commission answers this question in the negative and denies Nolin RECC's application.

On September 30, 1982, Nolin RECC began providing permanent electric service to the home of John Bland. To measure Mr. Bland's consumption of electricity, a four dial meter with a multiplier of 40 was installed. With this type of meter electric consumption is determined by multiplying the kilowatt usage indicated on the face of the meter by 40. At the time of the meter's installation, the meter's multiplier was erroneously listed in Nolin RECC's billing records as 10. As a result, Mr. Bland was billed for only a quarter of his actual electricity usage. This error was discovered in January 1986 after a routine

meter check. Shortly thereafter, Nolin RECC issued a corrected bill to Mr. Bland for \$8,649.80 to recover the underbilled amount.

In January 1985, the electric meter outside Donald Farris' residence was removed and a new meter installed. This meter, a four dial meter with a multiplier of 10, was erroneously listed in Nolin RECC's billing records as a five dial meter with a multiplier of 1. As a result, Mr. Farris was billed for only one tenth of his actual electric usage. Because Mr. Farris continually listed only four, instead of five, numbers on his meter reading reports,¹ a Nolin RECC employee visited the Farris residence in October 1985 to read the meter. He discovered and reported the error. Shortly thereafter, Nolin RECC billed Farris for \$989.67 for his unbilled service.

Both Mr. Bland and Mr. Farris refuse to pay the corrected bills. After several unsuccessful attempts to collect these corrected bills, Nolin RECC agreed to accept \$1500 from Mr. Bland and \$494 from Mr. Farris in full satisfaction of their bills. It now places these agreements before the Commission.

Nolin RECC advances several reasons in support of its decision to accept less than the full amount owed. First, the billing error was due solely to the negligence of its employees. Second, both customers acted in good faith. Neither had any knowledge of the error. Third, both customers' reliance on the

¹ Nolin RECC requires its members to read their own electric meters and then report these readings to it.

accuracy of their bills induced them to use excessive amounts of electricity. Once the billing errors were discovered, both significantly reduced their consumption of electricity. Mr. Bland, for example, cut his consumption by 73 percent. Finally, Nolin deemed the potential litigation costs as too high and the prospects of recovery as too low, especially if a jury trial was held, to justify legal action to collect the corrected bills.

These agreements significantly reduce the rates for electric service received by Messrs. Bland and Farris during the periods in which the billing errors occurred. Based on the then effective rate schedules on file with the Commission, Mr. Bland received approximately \$11,745.33 in service from Nolin RECC between September 1982 and January 1986. Under the terms of his agreement with Nolin RECC, he will pay only \$4,595.53, or 61 percent less than the filed rate schedules prescribe. Mr. Farris' actual bill for service during the underbilled period is \$1,353.90. His agreement with Nolin RECC requires him to pay only \$858.23, or approximately 37 percent less than other customers would pay for the same service.²

Insofar as the agreements reduce the rates charged to Messrs. Bland and Farris, they conflict with KRS 278.160(2) and KRS

² These figures include \$3,095.53 and \$364.23 paid by Mr. Bland and Mr. Farris, respectively, prior to the discovery of the billing error.

278.170(1). KRS 278.160(2)³ prohibits a utility from accepting less compensation than that prescribed in its filed rate schedules. Although no reported decisions regarding this statute have been issued by the courts of this state, courts in other jurisdictions interpreting similarly worded statutes have held that utilities must strictly adhere to their published rate schedules and may not, either by agreement or conduct, depart from them.⁴ Haverhill Gas Co. v. Findlen, 258 N.E.2d 294 (Mass. 1970); Capital Properties Co. v. Public Service Comm'n, 457 N.Y.S.2d 635 (N.Y. App. Div. 1982); West Penn Power Co. v. Nationwide Mut. Ins. Co., 228 A.2d 218 (Pa. Super. 1967). But see Jacksonville Elec. Authority v. Draper's Egg & Poultry Co., Inc., 531 So.2d 373 (Fla. Dist. Ct. App. 1988); Consolidated Edison Co. of New York, Inc. v. Arroll, 322 N.Y.S.2d 420 (N.Y. Civ. Ct. 1971).

The primary effect of KRS 278.160(2) is to bestow upon a utility's filed rate schedule the status of law. "The rate when

³ "No utility shall charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any utility for a compensation greater or less than that prescribed in such schedules."

⁴ A similar rule applies to the published rate schedules of common carriers. Louisville & N.R.Co. v. Central Iron & Coal Co., 265 U.S. 59 (1924); Pittsburgh, C.C. & St. L. R. Co. v. Fink, 250 U.S. 577 (1919); Louisville & N.R.Co. v. Maxwell, 237 U.S. 94 (1915); Chicago, B. & Q. R. Co. v. Ready Mixed Concrete Co., 487 F.2d 1263 (8th Cir. 1973); In Re Penn Central Transportation Co., 477 F.2d 841 (3rd Cir. 1973), cert. denied, 414 U.S. 923 (1973); Sallee Horse Vans v. Pessin, 763 S.W.2d 149 (Ky. Ct. App. 1988).

published becomes established by law. It can be varied only by law, and not by act of the parties. The regulation . . . of . . . rates takes that subject out of the realm of ordinary contract in some respects, and places it upon the rigidity of a quasi-statutory enactment." New York N.H. & H.R. Co. v. York and Whitney, 102 N.E. 366, 368 (Mass. 1913). See also Wisconsin Power & Light Co. v. Berlin Tanning & Mfg. Co., 83 N.W.2d 147 (Wis. 1957). While a utility may file or publish new rate schedules to change its rates, KRS 278.180, it lacks the legal authority to deviate from its filed rate schedule.

This inflexibility is in large measure the result of a strong public policy to ensure rate uniformity, to "have but one rate, open to all alike, and from which there could be no departure." Boston & M.R.R. v. Hooker, 233 U.S. 97, 112 (1914). Equality among customers cannot be maintained if enforcement of filed rate schedules is relaxed. For this reason, neither equitable considerations nor a utility's negligence may serve as a basis for departing from filed rate schedules. Goddard v. Public Service Co. of Colo., 599 P.2d 278 (Colo. App. 1979); Haverhill Gas Co. v. Findlen; Laclede Gas Co. v. Solon Gershman, Inc., 539 S.W.2d 574 (Mo. App. 1976); Consolidated Edison Co. of New York, Inc. v. Jet Asphalt Corp., 522 N.Y.S.2d 124 (N.Y.App. Div. 1987); City of Wilson v. Carolina Builders of Wilson, Inc., 379 S.E.2d 712 (N.C. Ct. App. 1989); West Penn Power Co. v. Nationwide Mut. Ins. Co.; Memphis Light, Gas & Water v. Auburndale School System, 705 S.W.2d 652 (Tenn. 1986); Chesapeake & Potomac Tel. Co. of Virginia v. Bles, 243 S.E.2d 473 (Va. 1978); Wisconsin Power &

Light Co. v. Berlin Tanning & Mfg. Co. To do so would increase the potential for fraud, corruption, and rate discrimination.

While KRS 278.160(2) limits a utility's authority to depart from its filed rate schedule, KRS 278.170(1)⁵ imposes an affirmative obligation upon a utility to charge and collect its prescribed rates. KRS 278.170(1) requires a utility to treat all similarly situated customers in substantially the same manner. If a utility fails to collect from a customer the full amount required by its filed rate schedule, it effectively grants a preference in rates to that customer as it allows him to pay less than other customers for the same service. In Corp. De Gestion Ste-Foy, Inc. v. Florida Power & Light Co., 385 So.2d 124 (Fla. Dist. Ct. App. 1980), an action involving underbilling resulting from an employee's misreading of a meter, the Florida District Court of Appeals reviewed a statute⁶ very similar to KRS 278.170(1) and declared:

The public policy embodied in this and similar statutory provisions precludes a business whose rates are

⁵ "No utility shall, as to rates or service, give any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage, or establish or maintain any unreasonable difference between localities or between classes of service for doing a like and contemporaneous service under the same or substantially the same conditions."

⁶ "No public utility shall make or give any undue or unreasonable preference or advantage to any person or locality or subject the same to any undue or unreasonable prejudice or disadvantage in any respect." Fla. Stat. §366.03 (1977).

governmental regulated from granting a rebate or other preferential treatment to any particular individual. Accordingly, it is universally held that a public utility or common carrier is not only permitted but is required to collect undercharges from established rates, whether they result from its own negligence or even from a specific contractual undertaking to charge a lower amount. (Emphasis supplied.)

Id., at 126. See also, Sigal v. City of Detroit, 362 N.W.2d 886 (Mich. Ct. App. 1985).

Based upon the foregoing, the Commission is of the opinion that a utility may not agree to accept less compensation for its service rendered than its filed rate schedule prescribes to settle a billing dispute but has a statutory duty to collect the full amount due for such service. In view of this statutory duty, Nolin RECC's application must be denied.

The Commission recognizes the practical difficulties in collecting the amounts owed and fully appreciates Nolin RECC's judgment that "it . . . [makes] much better business sense to settle the cases for the amounts tentatively agreed upon."⁷ We further recognize that the rigid and inflexible approach mandated by the large body of statutory and case law on this issue will lead to harsh and inequitable results in some instances. The Commission must, however, enforce the provisions of KRS Chapter 278. If Nolin RECC or its customers wish relief from these provisions, they must look to the General Assembly.

⁷ Nolin RECC's Response to Commission Order of October 26, 1988, Item 13(b).

The Commission, after reviewing the evidence and being sufficiently advised, is of the opinion and finds that:

1. KRS 278.160(2) prohibits a utility from accepting less compensation for service rendered than that prescribed in its filed rate schedules.

2. KRS 278.170(1) imposes an affirmative duty upon a utility to collect undercharges from established rates.

3. Nolin RECC underbilled Mr. Bland for electricity provided to his home between September 1982 and January 1986 in the amount of \$8,649.80.

4. Under the terms of the agreement presented for Commission approval, Nolin RECC agrees to accept a payment of \$1,500 in satisfaction of all unbilled electricity received from September 1982 to January 1986.

5. Nolin RECC underbilled Mr. Farris in the amount of \$989.67 for electricity provided to his home between January 1985 and October 1985.

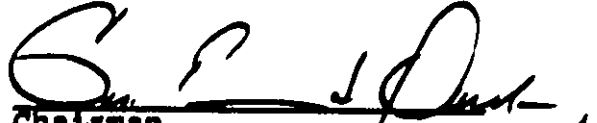
6. Under the terms of the agreement presented for Commission approval, Nolin RECC agrees to accept a payment of \$494 in satisfaction of all unbilled electricity received between January 1985 and October 1985.

7. As the agreements presented for Commission approval would require Nolin RECC to accept less compensation for service rendered than that prescribed in its filed rate schedule, they are inconsistent with KRS 278.160(2) and KRS 278.170(1) and cannot be approved.

IT IS THEREFORE ORDERED that Nolin RECC's application for approval of its settlement agreements with Messrs. Bland and Farris is denied.

Done at Frankfort, Kentucky, this 19th day of September, 1989.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Executive Director